

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

KEN PEARSON CONSTRUCTION, INC.)	
)	
Appellant,)	PCHB No. 88-186
)	
v.)	
)	
PUGET SOUND AIR POLLUTION)	FINAL FINDINGS OF FACT,
CONTROL AGENCY,)	CONCLUSIONS OF LAW
)	AND ORDER
Respondent.)	
)	

This is an appeal of Notice and Order of Civil Penalty Nos. 6908 and 6909, totaling \$2,000 for alleged violation of Puget Sound Air Pollution Control Agency's Regulation I, Article 8 (air pollution control regulations concerning open burning).

A formal hearing was held before the Pollution Control Hearings Board on May 16, 1989 at the Smith Tower Building in Seattle, Washington, before Board Chairman Wick Dufford and Member Harold S. Zimmerman, presiding.

1 Appellant Ken Pearson Construction, Inc., was represented by Ken
2 Pearson, President of the firm. Respondent PSAPCA was represented by
3 Keith D. McGoffin of McGoffin & McGoffin (Tacoma). Cheri L. Davidson
4 of Gene Barker & Associates provided court reporting services.

5 Witnesses were sworn and testified. Exhibits were examined and
6 admitted. From testimony, exhibits and contentions of the parties,
7 the Board makes these

8 FINDINGS OF FACT

9 I

10 Richard J. Gribbon, Air Pollution Inspector for the Puget Sound
11 Air Pollution Control Agency (PSAPCA), at approximately 10:30 a.m.,
12 October 18, 1988, while on routine patrol in south King County,
13 observed a column of smoke emanating from the south end of the city of
14 Pacific, near the King-Pierce County line.

15 II

16 The inspector observed from a distance the source of smoke was
17 near residential structures under construction. There were two
18 separate and distinct areas of flame. He took pictures from a
19 distance.

20 III

21 As he arrived at the source, the inspector observed a third fire
22 smoking north of the other two fires. At close range he took
23 additional photographs.

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25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER

1
2 IV

3 The inspector observed and documented tar/felt paper, asphalt
4 composition roofing, plywood, waferboard, other treated wood,
5 caulk/glue tubes, insulation, plastics and glass actively burning in
6 the piles.

7 V

8 Inspector Gribbon contacted Mr. Ken Pearson, identified himself,
9 and advised Mr. Pearson of the purpose of his visit.

10 VI

11 Mr. Pearson said the fires were started by an employee of his to
12 dispose of some of the construction debris on Lot #6 and Lot #7 in
13 West Cedar Glen. Mr. Pearson stated that other sub-contractors had
14 added debris to the burning piles.

15 VII

16 Mr. Pearson showed Inspector Gribbon the City of Pacific Fire
17 Department Permit No. 88797, issued October 17, 1988, for residential
18 burning.

19 VIII

20 Inspector Gribbon showed Mr. Pearson sections of the permit
21 allegedly being violated, supplied Mr. Pearson an Article 8 handout,
22 and said that potential civil penalties would be \$2,000. At this
23 time, Mr. Pearson ordered the worker who had started the fires to
24 begin extinguishing them. Mr. Pearson expressed no hostility during
25 the discussions.

26 FINDINGS OF FACT,
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IX

PSAPCA issued four Notices of Violation on October 21, 1988, citing 8.02(3) and 8.05(1) of Regulation I. Subsequently PSAPCA issued two Notice and Order of Civil Penalty Nos. 6908 and 6909 in the amount of \$1,000 each (total \$2,000) which were sent to appellant by certified mail on December 12, 1988.

X

Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

From these Findings of Fact, the Board makes these

CONCLUSIONS OF LAW

I

The Board has jurisdiction over these parties and these matters. Chapters RCW 70.94 and 43.21B.

II

The language of PSAPCA Regulation I, Article 8, Section 8.02(3) (see Finding of Fact IX, above) parallels the outdoor burning prohibitions in the underlying statute, RCW 70.94.775. The pertinent part of Section 8.03(3) reads:

"It shall be unlawful for any person to cause or allow any outdoor fire . . .

(3) containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics or any substance other than natural vegetation which normally emits dense smoke or obnoxious odors.

The other pertinent section follows:

FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER

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(4)

1 SECTION 8.05 OTHER BURNING

2 It shall be unlawful for any person to cause or
3 allow any outdoor fire other than land clearing burning
4 or residential burning except under the following
5 conditions:

6 (1) Prior written approval has been issued by the
7 Control Officer or Board. . . .

8 II

9 We conclude that state policy also applies, as enunciated in RCW
10 70.94.740:

11 It is the policy of the state to achieve and maintain
12 high levels of air quality and to this end to minimize
13 to the greatest extent reasonably possible the burning
14 of outdoor fires. Consistent with this policy, the
15 legislature declares that such fires should be allowed
16 only on a limited basis under strict regulation and
17 close control.

18 IV

19 The Washington Clean Air Act is a strict liability statute. Acts
20 violating its implementing regulations are not excused on the basis of
21 absence of intent. RCW 70.94.040, RCW 70.94. 431, Industrial
22 Maintenance and Construction, Inc. v. PSAPCA, PCHB No. 87-179 (1988).
23 Moreover, the duty to comply cannot be delegated away by contract,
24 Kent School District v. PSAPCA, PCHB 86-190 (1987).

25 V

26 The appropriateness of the amount of a civil penalty is a matter

27 FINDINGS OF FACT,
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1 involving consideration of factors bearing on reasonableness,
2 including:

- 3 (a) nature of the violation;
4 (b) prior behavior of the violator;
5 (c) actions taken after the violation to solve the problem.

6 Georgia Pacific v. DOE, PCHB No. 87-45 (1988).

7 In this case, appellant has long been aware of PSAPCA's open
8 burning program and knew or should have known that prohibited
9 materials cannot be placed in outdoor fires. His cooperative attitude
10 toward the inspector is laudable, but nothing in the record
11 demonstrates that there is any excuse for the violations themselves.

12 VI

13 Any Finding of Fact deemed to be a Conclusion of Law is hereby
14 adopted as such.

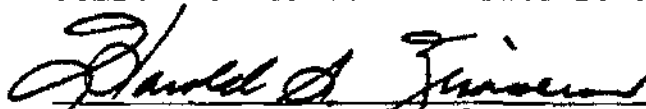
15 From these Conclusions of Law, the Board enters this
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ORDER

Notice and Order of Civil Penalty Nos. 6908 and 6909 are AFFIRMED.

DONE this 30th day of May, 1989.

POLLUTION CONTROL HEARINGS BOARD


HAROLD S. ZIMMERMAN, Presiding


WICK DUFFORD, Chairman

FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
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(7)